

Attached hereto is a marked-up version of the changes made to the application by the current amendment. The attached pages are entitled "APPLICATION MARKED TO SHOW CHANGES MADE".

The applicant addresses each appropriate paragraph of the Office Action as follows:

Drawings

1. The drawings were objected to under 37 C.F.R. 1.83(a) as allegedly failing to show every feature of the invention specified in the claims. The Office asserts that the starter material of claim 11 must be illustrated or the feature canceled from the claims.

The detailed description concerning Figure 1 is amended in the paragraph starting at page 5, line 23, so that reference numeral 10 is a graphical representation referring to a firelog or starter material. No new matter is added to the application by this amendment. The application describes throughout a fireplace grate that defines a compartment for holding a firelog or starter material and isolating the firelog or starter material from wood or ceramic logs placed on top of the frame of the fireplace grate. See page 3, line 17-20, page 5, and line 25 – page 6, line 8. Reference numeral 10 graphically represents a firelog or starter material. Accordingly, the applicant requests that the objection to the drawings be withdrawn.

Specification

2. The disclosure was objected to due to informalities in the specification.

Appropriate correction to the specification is presented herein. Specifically, the reference numeral for the upper cage member is amended at page 5, line 25, and page 8, line 23, to be identified correctly as reference numeral 160. The specification is also amended as described above to indicate reference numeral 10 graphically represents a firelog or starter material. Accordingly, the applicant requests that the objections to the specification be withdrawn.

Claim Objections

3. Claims 1-10, 12, and 13 were objected to due to informalities.

Appropriate correction suggested by the Office is presented herein. Specifically, claim 1, line 2 is amended to recite "grate members" instead of "grate member"; claim 3, line 2, and claim 13, line 4 are amended to replace the phrase "hingeably attached" with the term "hinged";

claims 8, line 2, and claim 9, line 2 are amended to replace the term “hingeable” with the term “hinged”; claim 8, line 1 is amended to spell correctly the term “removable”; and claim 12, line 4 is amended to replace the term “pivotally” with the term “pivot.” Accordingly, the applicant requests that the claim objections be withdrawn.

Rejections Under 35 U.S.C. § 112

5. Claim 7 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. The Office asserts that in the limitation “further comprising a plurality of compartments for firelog defined by the frame” is not clear as to the structure represented by the phrase “firelog defined by the frame.”

Claim 7, as suggested by the Office, attempts to claim a fireplace grate that defines a plurality of compartments, each compartment for holding a firelog or starter material. Thus, claim 7 is amended to recite a fireplace grate “further comprising a plurality of compartments defined by the frame for holding a plurality of firelogs.” Accordingly, the applicant requests that the rejection of claim 7 under section 112 be withdrawn.

Rejection Under 35 U.S.C. § 102(b)

7. Claims 1, 2, 7, 8, and 12 were rejected under 35 U.S.C. 102 as anticipated by Gerrard (U.S. Patent No. 5,435,295). The Office asserts that Gerrard discloses a fireplace grate comprising a frame 1 including a plurality of grate members 5, a base 2, and an upper frame/cage member 3, wherein the grate members define a compartment to hold a firelog 34 (see area defined by support members 10, 11 and Figs. 2, 3). The Office further asserts that ceramic logs are placed on top of the frame and direct contact is prevented between the firelog and the ceramic logs (see Fig. 4). The Office also asserts that additional support bars may be added as desired to provide support for additional firelogs, that a poker positioned in V-notch 28 in front protector bar 27 may be used to open the upper frame/cage member, and that at least one ceramic log is secured by pins 25, 26 to the upper frame/cage member 3 which is attached to the frame 3 by pivot arms 17.

The applicant respectfully traverses the rejection and submits that the structure of the claimed apparatus is distinguishable from the cited references. The application describes a

fireplace grate that isolates a firelog or starter material from a wood or ceramic log. The described fireplace grate includes grate members and cross members that define a supporting platform for holding wood or ceramic logs in selected positions and a compartment depending from the platform for holding a firelog in isolation. Accordingly, amended claim 1 recites a fireplace grate comprising a frame including a plurality of grate members and a plurality of cross members, said grate members and said cross members defining a platform and a substantially enclosed compartment, the compartment operative to hold a firelog and to prevent direct contact between the firelog and wood or ceramic logs placed on top of the platform. No new matter has been added by this amendment, support being found in the specification at page 5, line 23 – page 7, line 18, and in the figures.

The claimed apparatus is distinguishable from the Gerrard. Gerrard discloses a fireplace wire rack comprising a base 2 for supporting a firelog and an upper frame 3 pivotally connected to the base and adapted to support artificial logs. The base is a wire rack consisting of left and right side members 4, which include horizontal rails 5 connected by horizontal bars 10, 11, 12. Bars 10, 11 are positioned at the front of the side members so that they can support paper wrapped firelogs. The upper frame is a wire rack consisting of laterally disposed side sections 13, 14 connected by fibre log support bars 23, 24 that have fibre log support pins 25, 26 for retaining fibre logs in position.

The applicant respectfully submits that Gerrard does not anticipate the applicant's amended independent claim 1. The structure of the claimed apparatus is distinguishable from the structure of the cited reference. Gerrard does not disclose, or even suggest, a plurality of grate members and a plurality of cross members that define a platform for a log and an isolated compartment for a firelog. Gerrard discloses a wire rack. This disclosure of a wire rack does not teach or suggest a platform for log placement but merely describes a support bar with a support pins for mounting of a log. Additionally, Gerrard does not disclose a substantially enclosed compartment for holding a firelog. A compartment is one of the parts into which an enclosed space is divided. WEBSTER'S COLLEGIATE DICTIONARY (Mish ed., 9th ed. 1988). The wire rack of Gerrard does not define an enclosed space. While horizontal bars 10, 11 partially support a firelog, they do not form a substantially enclosed compartment.

In contrast to Gerrard, the applicant's claimed invention recites grate members and cross members that form a platform and a substantially enclosed compartment. Gerrard fails to

disclose or suggest these features. A reference only anticipates a claim when the reference teaches each and every limitation recited by the claim. Accordingly, as Gerrard fails to anticipate each and every limitation of amended independent claim 1, the applicant respectfully submits that the claim is patentable over the Gerrard. Thus, the applicant respectfully requests withdrawal of the rejection and allowance of claim 1.

Claims 2, 7, and 8 depend directly and indirectly from claim 1 and thus include all of the limitations of claim 1. The applicant reiterates that claim 1 is patentable over the cited art for the reasons stated above, specifically the failure of the cited art to teach each and every limitation of the independent claims. Accordingly, dependent claims 2, 7, and 8 are believed patentable based on such dependency and further limitation within each claim.

Independent claim 12 recites the disclosed invention in alternative terms. Specifically, claim 12 recites a fireplace grate including a base, a pivot arm, and a ceramic log. The base is formed by grate members and cross members that define a platform and a substantially enclosed compartment depending therefrom. The base is operative to support a firelog in the compartment and logs on top of the platform. A ceramic log is pivotally attached to the base by the pivot arm and pivots between a first position that permits insertion of the firelog into the compartment and a second position that encloses the compartment and prevents direct contact between the firelog and logs placed on top of the platform.

For the reasons stated and explained above, the applicant submits that claim 12 is patentable over Gerrard. Gerrard fails to disclose or suggest a platform for logs and a substantially enclosed compartment for a firelog depending from the platform, the firelog enclosed in the compartment by a ceramic log that pivots over and substantially encloses the compartment. Accordingly, the applicant respectfully requests withdrawal of the rejection and allowance of claim 12.

8. Claim 11 was rejected under 35 U.S.C. 102 as anticipated by Eges (U.S. Patent No. 5,360,714). The Office asserts that Eges discloses a fireplace grate comprising a frame including a plurality of grate members in the form of rings 53, 54 connected by bars 55, wherein grate members form a compartment (see Fig. 4 and space within rings 53, 54) to hold starter material 31 and direct contact is prevented between starter material and wood logs placed on the top of the frame (see Fig. 4).

The applicant respectfully traverses the rejection and submits that Eyges does not anticipate amended claim 11. Eyges discloses a fireplace grate comprising four sets of holders 1, 2, 11, 12 arranged to hold paper in two transverse rows. On a single row, two sets of holders are arranged with the holder in each set (rings 3 - 7) arranged side by side, each holder in each set having a corresponding holder in the other set which is in registration therewith. Cross bars 24 - 29 connect the front set of holders 1 to the rear set 2 and provide a grate between the two lower sets 1, 2 and the two upper sets 11, 12 of holders.

In contrast, amended independent claim 11 recites a fireplace grate comprising a frame including a plurality of grate members and a plurality of cross members, the frame defining a platform and a substantially enclosed compartment depending therefrom, the compartment operative to hold a starter material and to prevent direct contact between the starter material and wood or ceramic logs placed on top of the platform.

In contrast to the applicant's claimed invention, Eyges fails to disclose, or even suggest, that grate members and cross members form a platform and a substantially enclosed compartment that depends therefrom. Figure 4 does not depict a compartment or an enclosed space. Contrarily, the Figures of Eyges illustrate sets of holders (rings 53, 54 of Fig. 4) which are in registration with unshown rings on the opposite side of the fireplace grate. The rings provide support for a paper roll placed therein only at the edges of the paper roll (i.e., the edges of the fireplace grate). Thus, these sets of rings do not form a substantially enclosed compartment. No other structure is disclosed or suggested that would substantially enclose the registration area between corresponding rings to fully support paper rolls used in the Eyges fireplace grate.

Eyges fails to disclose or suggests all aspects of the applicants' claimed invention. Accordingly, as Eyges fails to anticipated each and every limitation of the amended independent claim 11, the applicant respectfully submits that the claims is patentable over Eyges. Allowance of claim 11 is respectfully requested.

Rejection Under 35 U.S.C. § 103(a)

10. Claims 3, 4, and 13 are rejected under 35 U.S.C. 103 as obvious over Gerrard in view of Kutchera (U.S. Patent No. 2,519,482). The Office asserts that Gerrard discloses all limitations of the claims except that the fireplace grate is explicitly "hinged" to the base, that the grate

members include a U-shaped portion, and that the ceramic log is explicitly "hinged" to the frame. However, the Office asserts that Kutchera teaches that the term "hinge" and "pivot" are understood to be equivalent terms for describing structure that permits grate sections to swing from a first position to a second position, and that Kutchera teaches grate sections having bars that are substantially U-shaped and serve as a fuel support.

Claims 3 and 4 depend from and include all of the limitations of claim 1. As such, these claims defined a fireplace grate including a frame having a platform a substantially enclosed compartment. Accordingly, the applicant reiterates the remarks above concerning the failure of Gerrard to disclose or suggest a frame with a platform and a substantially enclosed compartment. Kutchera also fails to disclose or suggest these features, merely disclosing a fireplace grate in the form of a U-shaped basket having two hinged sections.

With respect to the assertion that Gerrard teaches a pivot means and Kutchera teaches a pivot means is equivalent to a hinge means, the applicant notes the Office's use of the term "pivot" only in its verb sense to describe motion about a point. Gerrard teaches a pivot means formed by one piece of low carbon wire rod bent as illustrated in Fig. 1. See column 2, line 8 – 15. Kutchera uses the term "pivot" only in describing the motion of the basket sections of the fireplace grate provided by a pivot flange or hinge. See column 3, line 34. The grate sections are pivotally mounted on one of the rods by provision of any desired number of depending flanges or ears secured to, or formed integral with, the outer bar of each section. See column 3, line 23 – 31. The present application discloses a different structure (see Figs. 2 and 4) than that of the cited references.

It is respectfully submitted that claims 3 and 4 are patentable based on claim dependency and any further patentable limitation contained within each claim.

Independent claim 13 recites the disclosed fireplace grate invention in alternative terms as including a base formed by a plurality of grate members and a plurality of cross members that define a platform and a substantially enclosed compartment depending therefrom for supporting a firelog. The fireplace grate also includes a ceramic log hinged to the base with a first position that permits the insertion of the firelog onto the compartment of the base and a second position that encloses the compartment and prevents direct contact between the firelog and wood or ceramic logs placed on top of the platform.

As stated above, the applicant submits that Gerrard and Kutchera, individually or in combination, fail to disclose or suggest a fireplace grate with a platform and a substantially enclosed compartment. In addition, neither reference discloses a ceramic log hinged to a base of a fireplace grate. Gerrard discloses a wire rack having a upper frame that pivots to a lower section of the wire rack. A log is separately attached to the upper frame of the wire rack via fibre log support pins. Kutchera discloses a fireplace grate with hinged sections. In contrast, claim 13 recites a fireplace grate including a platform and a substantially enclosed compartment, and a ceramic log hinged to the base of the fireplace grate. Accordingly, based on claim dependency and the cited references lack of disclosure or suggestion directed to all features of the claimed invention, the applicants respectfully submits that claim 13 is patentable and request withdrawal of the rejection.

11.-14. Claim 5 is rejected as obvious over Gerrard in view of Thompson (U.S. Patent No. 4,360,001). Claim 6 is rejected as obvious over Gerrard in view of Dotson et al. (U.S. Patent No. 4,692,168). Claim 9 is rejected as obvious over Gerrard in view of Fischer (U.S. Patent No. 4,838,781) and Kutchera. Claim 10 is rejected as obvious over Gerrard in view of Betenbaugh (U.S. Patent No. 4,257,392).

The applicant respectfully traverses these rejections and submits that claims 5, 6, 9, and 10 are not obvious over the disclosure of Gerrard in view of the cited secondary references. A claim is obvious in light of a combination of references if the combination of references teach or suggest all of the limitations recited by the claim. The applicant respectfully submits that these claims include claimed subject matter not found in and clearly distinguishable from the disclosure of the cited references, individually or in combination. In addition, neither Gerrard, nor the cited secondary references disclose, suggest, or provide the motivation, individually or in combination, to one skilled in the art to combine the cited references in the manner suggested by the Office.

As explain throughout this Amendment and Response, Gerrard fails to disclose or suggest a fireplace grate with a platform and a substantially enclosed compartment. Similarly, the secondary references, which are relied on for other disclosure, fail to disclose these features. Accordingly, the applicant respectfully submits that the claims are not obvious in light of the cited references since, individually or in combination, the cited references fail to disclose or

suggest all of the features of applicant's claimed invention. The applicant respectfully requests withdrawal of these rejections and allowance of claims 5, 6, 9, and 10.

New Claims

Claims 14 - 22 are added by this amendment to better cover various aspects of the disclosed invention. These claims add no new matter to the application; support for all claims is found throughout the written description and the drawings.

Claims 14, 15, 16, and 17 recite a fireplace grate including a supporting member extending across the bottom of the compartment. Support for such a claim is found in the specification at page 7, line 5 - 14, which discloses flat supporting members (134) extending longitudinally to further support the firelog in the compartment. As the applicant discloses in the background of the invention, should the firelog fall apart, it may flare-up. The supporting member prevents the firelog from falling through the grate members as the firelog loses rigidity and begins to fall apart.

The cited references fail to disclose or suggest such a support member to provide additional support and prevent flare-up. Additionally, claims 14, 15, 16, and 17 depend from claims 13, 12, 11, and 1 respectively and thus include all of the limitations of their base claim. Based on that claim dependency and the cited references' lack of disclosure or suggestion of a support member in the bottom of the compartment, the applicant submits that claims 14-17 are patentable over the cited references.

Claim 18 recites the fireplace grate of claim 1 with at least two cross members positioned on the platform proximate an opening in the compartment. The figures of the application illustrate this positioning of the cross members, which is described generally at page 6, line 13 - page 7, line 18. The application describes problems associated with flare-up of firelog and thus the need isolate the firelog from wood or ceramic logs on the fireplace grate. As shown and described, cross members are placed near an opening in the compartment. The cross members serve to isolate the compartment by preventing a log from sliding into the compartment. The cited references fail to disclose a fireplace grate including a platform and substantially enclosed compartment, nor the positioning of cross members on the platform near the opening to the compartment to additionally isolate the compartment from the platform. Therefore, based on the

lack of disclosure or suggestion in the cited references and its dependence from a claim believed patentable, the applicant submits that claims 18 is patentable over the cited references.

Claim 19 recites the disclosed invention previously claimed in alternative terms and is believed patentable over the cited references for the same reasons noted above with respect to the other independent claims. Accordingly the applicant reiterates those remarks and requests allowance of claim 19.

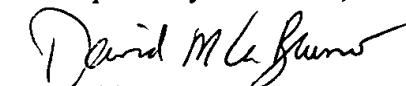
Claims 20-22 depend from and include all of the limitations of claim 18 and recite various aspects to the disclosed invention in alternative terms. As above, the applicant respectfully submits that the claims are patentable due to the failure of the cited references to teach or suggest each and every claim limitation. The applicant respectfully submits that claims 20-22 are patentable based on their claim dependency and additional patentable subject matter contained in each claim.

Conclusion

Based on the foregoing remarks, it is respectfully submitted that the claims as currently pending are patentable and in condition for allowance. Reconsideration of the application and withdrawal of all rejections are respectfully requested.

In the event that a telephone conference would facilitate examination in any way, the Examiner is invited to contact the undersigned representative at the number provided.

Respectfully submitted,


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Dated: October 23, 2002

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**APPLICATION MARKED TO SHOW CHANGES MADE
IN THE SPECIFICATION**

At page 5, line, 23, please substitute the following paragraph:

Referring first to FIG. 1, a fireplace grate 100 comprises a frame 102 including a base 110 and an upper cage member 160. The base 110 and upper cage member [130] 160 define a cavity or compartment 150 for holding a firelog or starter material 10. The compartment 150 isolates the firelog [10] or starter material from wood or ceramic logs 20 placed on top of the frame 102, preventing the firelog [10] or starter material from being crushed or smothered by the wood or ceramic logs [20]. The firelog [10] may include, for example, a starter brick or gel log. In [an alternate] another embodiment, the compartment 150 can hold a starter material such as, for example, newspaper, kindling, cardboard, or the like.

At page 8, line, 13, please substitute the following paragraph:

The upper cage member 160 includes a plurality of inverted U-shaped, or, alternatively, V-shaped, grate members 162 spaced in a parallel relation. The plurality of grate members 162 are connected to two longitudinally extending cross members 164, 166 for stability and rigidity. The upper cage member 160 is positioned over the U-shaped, or, alternatively, V-shaped, portion 130 of the grate members 112 of the base 110 to form the cavity or compartment 150 which separates the firelog 10 and prevents the firelog from directly contacting the wood or ceramic logs 20 placed on top of the U-shaped grate members 162 of the cage member [150] 160 or on top of the front and rear portions 120, 140 of the grate members 112 of the base 110. This compartment draws attention to protecting the firelog and restricts access to the firelog from being crushed, broken open or poked at by fireplace tools.

IN THE CLAIMS

1. (Amended) A fireplace grate comprising a frame including a plurality of grate [member] members and a plurality of cross members, said grate members [define a] and said cross members defining a platform and a substantially enclosed compartment, the compartment

operative to hold a firelog and to prevent direct contact between the firelog and wood or ceramic logs placed on top of the [frame] platform.

2. (Amended) The fireplace grate of claim 1, wherein the frame includes a base defining a cavity and [an upper] a cage member positioned on [top of] the base to define the compartment.

3. (Amended) The fireplace grate of claim 2, wherein the [upper] cage member is [hingeably attached] hinged to the base.

4. (Amended) The fireplace grate of claim 2, wherein the base is formed by [a] the plurality of grate members connected by [at least two] the plurality of cross members, the grate members [include] including a U-shaped portion for supporting the firelog.

5. (Amended) The fireplace grate of claim 2, wherein the base is formed by [a] the plurality of grate members connected by [at least two] the plurality of cross members, the grate members [include] including a V-shaped portion for supporting the firelog.

6. The fireplace grate of claim 1, wherein the firelog is a gel log.

7. (Amended) The fireplace grate of claim 1, further comprising a plurality of compartments [for firelog] defined by the frame for holding a plurality of firelogs.

8. (Amended) The fireplace grate of claim 3, further comprising a [removeable] removable handle for moving the [hingeable] hinged cage member.

9. (Amended) The fireplace grate of claim 2, wherein the [upper] cage member includes a [hingeable] hinged door.

10. The fireplace grate of claim 1, wherein the firelog is supported by at least four grate members of the frame.

11. (Amended) A fireplace grate comprising a frame including a plurality of grate members and a plurality of cross members, [said grate members define a] the frame defining a platform and a substantially enclosed compartment depending therefrom, the compartment operative to hold a starter material and to prevent direct contact between the starter material and wood or ceramic logs placed on top of the [frame] platform.

12. (Amended) A fireplace grate, said fireplace grate comprising:

 a base formed by a plurality of grate members and a plurality of cross members, said base defining a platform and a substantially enclosed compartment depending therefrom, said base for supporting a firelog in the compartment;

at least one pivot arm; and

 at least one ceramic log [pivotably] pivottally attached to the [frame] base by the at least one pivot arm, wherein the at least one ceramic log pivots between a first and second position, wherein the first position permits the insertion of the firelog [onto] into the compartment of the base, and wherein the second position encloses the compartment and prevents direct contact between the firelog and wood or ceramic logs placed on top of the platform of the [frame] base.

13. (Amended) A fireplace grate, said fireplace grate comprising:

 a base formed by a plurality of grate members and a plurality of cross members, said base defining a platform and a substantially enclosed compartment depending therefrom, said base for supporting a firelog in the compartment; and

 at least one ceramic log [hingeably attached] hinged to the [frame] base, wherein the at least one ceramic log hinges between a first and second position, wherein the first position permits the insertion of the firelog [onto] into the compartment of the base, and wherein the second position encloses the compartment and prevents direct contact between the firelog and wood or ceramic logs placed on top of the platform of the [frame] base.

14. (New) The fireplace grate of claim 13 wherein the base further includes
 a supporting member extending across the bottom of the compartment.

15. (New) The fireplace grate of claim 12 wherein the base further includes

a supporting member extending across the bottom of the compartment.

16. (New) The fireplace grate of claim 11 wherein the frame further includes
a supporting member extending across the bottom of the enclosed compartment.

17. (New) The fireplace grate of claim 1 wherein the frame further includes
a supporting member extending across the bottom of the compartment.

18. (New) The fireplace grate of claim 1 wherein at least two of the cross members are positioned on the platform proximate an opening in the platform to the compartment.

19. (New) A fireplace grate comprising:
a base including
a first plurality of grate members spaced in a parallel relation, and
a first plurality of cross members linking the first plurality of grate members,
wherein the base forms a platform for supporting a log and a cavity for supporting a firelog or starter material.

20. (New) The fireplace grate of claim 18 wherein the fireplace grate further includes
a cage member including
a second plurality of grate members spaced in a parallel relation, and
a second plurality of cross members linking the second plurality of grate members,
wherein the cage member encloses the cavity to form an enclosed compartment that separates the logs from the firelog or starter material.

21. (New) The fireplace grate of claim 18 wherein the base further includes
a supporting member extending across the bottom of the cavity.

22. (New) The fireplace grate of claims 18 further comprising:

a ceramic log connected to the base, wherein the ceramic log moves between a first position and a second position, wherein the first position permits insertion of the firelog or the starter material into the cavity, and wherein the second position encloses the cavity and prevents contact between the firelog and wood or ceramic logs placed on top of the platform.